IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.94 OF 1996.

Jaykumar Bharamgonda Patil : Appellant.

versus

The State of Maharashtra & Anr. : Respondents.

Mrs.Shakuntala A. Mudbidri for the appellant.
Mr.S.N.Gawade, AGP, for State.

CORAM : D.G.DESHPANDE,J.

DATED : 7th February 2005.

ORAL ORDER

1. Heard advocate for the appellant and AGP for the State. A short point is raised by the counsel for the appellant in this Appeal. As per para 16, the lower Court came to the conclusion about the market price of the acquired land and the calculations were made and the Court ultimately came to the conclusion that the claimants will be entitled to Rs.2,51,099.25 and,

if the amount is divided then each of the applicants will be entitled to Rs.1,25,549.62. However, the court awarded Rs.75,000/- only together with interest at 9% etc. because the claimants restricted their claim to Rs.75,000/- and they had paid court fee on the said amount. The court also found that there are no prayers from the claimants that if they are entitled to the excess amount of compensation, they are willing to pay the required additional court fees. The counsel for the appellant draw my attention to the judgment of the Division Bench of this Court reported in **1993 (3) Bombay L.R. 54 Nana Pandu Hudar & ors. v. State of Maharashtra** wherein the Division Bench awarded compensation in excess of the claim in appeal and gave directions to the appellants to pay additional court fee stamp for the excess sum. Therefore, the counsel for the appellant in this matter contended that opportunity should have been given to the appellant to pay excess court fee and, there was no reason to restrict the claim to Rs.75,000/- when the court came to the conclusion that each of the applicants will be entitled to Rs.1,25,549.62.

2. In view of this submission and in view of the judgment of the Division Bench, this appeal is required to be allowed to that extent only. Though the impugned order of the 2nd Additional District Judge, Kolhapur, dated 20.3.1990, was in respect of two References, the present appeal is filed by only one claimant i.e. Jaykumar Bharamgonda Patil in L.A.R. No.57 of 1983. Therefore, there is no appeal by other claimants. Therefore, this order will apply to only claimant Jaykumar Bharamgonda Patil. Hence the order :-

:ORDER:

The appeal is partly allowed.

The order in L.A.R. No.57 of 1983 dated 20.3.1990 is modified. The appellant will be entitled to compensation of Rs.1,25,549.62 with interest as awarded by trial Court upon there being court fees on the excess amount within six weeks from today. If the court fee is not paid, the original order will remain as it is.

[D.G.DESHPANDE]

07/02/2005 JUDGE.